

**MINUTES OF THE REGULAR MEETING OF THE
SAN MARCOS PLANNING AND ZONING COMMISSION
COUNCIL CHAMBERS, CITY HALL
December 8, 2009**

1. Present

Commissioners:

Sherwood Bishop, Chair
Ryan Thomason, Vice-Chair
Bill De Soto
Bill Taylor
Curtis Seebeck
Allen Shy (absent)
Cecil Pounds (absent)
Jim Stark
Randy Bryan

City Staff:

Chuck Swallow, Director of Development Services
Matthew Lewis, Assistant Director of Development Services
Francis Serna, Recording Secretary
Sofia Nelson, Senior Planner

2. Call to Order and a Quorum is Present.

With a quorum present, the Regular Meeting of the San Marcos Planning & Zoning Commission was called to order by Chair Bishop at 6:00 p.m. on Tuesday December 8, 2009 in the Council Chambers, City Hall Building of the City of San Marcos, 630 E. Hopkins, San Marcos, Texas 78666.

3. Chairperson's Opening Remarks.

Chair Bishop welcomed the audience.

4. **NOTE:** *The Planning & Zoning Commission may adjourn into Executive Session to consider any item listed on this agenda if a matter is raised that is appropriate for Executive Session discussion. An announcement will be made of the basis for the Executive Session discussion. The Planning and Zoning Commission may also publicly discuss any item listed on the agenda for Executive Session;*

5. Citizen Comment Period

There were no citizen comments.

6. **CUP-09-36.** Hold a public hearing and consider a request by Sean Greenberg, Pluckers-San Marcos AS, LP for a renewal of a Conditional Use Permit to allow on-premise consumption of liquor, beer, and wine at 105 N. IH 35.

Chair Bishop opened the public hearing.

Uruish Patel, Manger of Econo Lodge, 811 S. Guadalupe stated that the property is located adjacent to Plucker's. Mr. Patel informed the Commission that last year he received complaints of noise from customers and had to give refunds. He pointed out that he lost a lot of business due to the loud music at Plucker's and that he had many unhappy guests. Mr. Patel explained that he has spoken to Plucker's managers and that one answer he received was that, "we have a city permit and are fine." In addition, he stated that in the last several months, tenants have called the police department on several occasions when Plucker's would have music past their allowed music hours and were given a verbal warning during each incident.

Sean Greenburg, owner of Plucker's, 105 N. IH 35, stated he is sensitive of noise issues and have built a 10 ft. fence and faced stage to IH 35. He said as a business owner he is sensitive to the neighborhood problems. Mr. Greenburg explained that he extended his personal cell phone to the manager of the Econo Lodge. He pointed out that he runs a clean establishment and has a positive impact on the community. Mr. Greenberg said that he and his staff have been sensitive to the noise issues. He stated he is not aware of one time that music was played outside of the hours allowed. Mr. Greenberg added that he has decibel meter to monitor the noise level and stay within the noise regulations. He said that the police department has never voiced any real problems. Mr. Greenberg stated that he has spent a great deal of money on outdoor space and it is vitally important to be able to use the outdoor space. He said he was open to try additional remedies to address any issues. Mr. Greenberg added that his venue should not be further restricted.

Minal Patel, resident at 811 S. Guadalupe, stated she has a 14 month and 7 year old child that have a hard time falling asleep when there is music at Plucker's. She said that the surrounding community around Plucker's have also voiced their opinions regarding the loud music and also have trouble falling asleep.

Chris Flannagen, resident at 135 Cedar Grove, and a resident of San Marcos for the last eight years stated that he is a regular customer at Plucker's. Mr. Flannagen said he enjoys playing Trivia and has brought many friends from out of town to enjoy the live music in the summer. He added that the City has strived to have music venues. Mr. Flannagen spoke in support of the request.

There were no additional citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Taylor and a second by Commissioner Stark, the Commission voted four (4) for and three (3) opposed, to approve the request for six months for the amplified music to be evaluated and with the conditions that live music be played no later than 10:30 p.m. Sunday through Wednesday, 11:00 p.m. on Thursday, and midnight on Friday and Saturday; and the applicant comply with the noise standards as they exist or as amended. The motion carried.

7. CUP-09-37. Hold a public hearing and consider a request by Sage Outdoor Services for renewal of a Conditional Use Permit to allow the on-premise consumption of beer and wine at 3941 S. IH 35, Suite. 112.

Chair Bishop opened the public hearing. Robert Nami (Bob) explained that he bought The Lone Star Café located at Prime Outlet Mall. He stated that the location is a privately owned piece of property which he purchased from Rick Redman. Mr. Nami explained that he tore down and building and built an 18,000 sq. ft. building. He added that he currently has three shoe stores and a business called, Bath Junkie, which is his sons business. Mr. Nami pointed out that his son went through TABC process. TABC gave preliminary approval; therefore, they went ahead and applied for a TABC permit to allow on-premise consumption. Mr. Nami added that his son went

15. ZC-09-20. Hold a public hearing and consider possible action on a request by Baker-Aicklen & Associates, on behalf of Craddock Avenue Partners, LLC for a zoning change from Unzoned to Multi-Family (MF-12) on 30.97 acres located at 1314 Franklin Dr.

Ed Theriot, ETR Development Consulting, 5395 IH 183, Lockhart, Texas gave a ten minute presentation.

Chair Bishop opened the public hearing for LUA-09-14, ZC-09-17, LUA-09-15, ZC-09-18, LUA-09-16, ZC-09-19, LUA-09-17 and ZC-09-20.

Diane Wassenich, 11 Tangelwood, stated she feels that at the City Council meeting this week and tonight's meeting, they are seeing an extremely complex deal. She said no one has questioned the maps that the deal has been set upon. Ms. Wassenich said the Commission should ask to review the maps submitted in the Development Agreement. She felt that there are discrepancies regarding the recharge features. She added that the Wonder World Drive extension was sold to the community and that it would not cause dense development. Ms. Wassenich mentioned that she understands why the City feels they received a good deal because of the minimal development in Phase 2 and 3. She commented that Phase 1 is also full of recharge features. Ms. Wassenich suggested that the Planning Department and the Commission ask where the cave footprints come from. She said if entitlements are going to be given then we should know what maps and recharge features are in place and confirm that TCEQ is in agreement. She pointed out that when Council asked if there is a map on file, the developer and engineer stated that there is a map on file. Ms. Wassenich encouraged the Commission to postpone the requests until TCEQ and the Engineering Firm come to an agreement concerning the recharge features on the property.

Jessica Henry, 2014 Nevada stated that she bought her home two years ago because she did not want to be on the other side of Ranch Road 12. She felt that by changing the zoning, she is being bookended with areas that will be heavily used by students. She pointed out that there is a current issue with Sagewood area. Ms. Henry stated that they currently have issues fighting with students living in a single family area. She mentioned that she bought her house because it is located in a family neighborhood. She added that there will be traffic issues and the area would change single family homes to rental property.

Chad Williams, resident of the Westover District inquired on the Edward's Aquifer Protection Plan, Section 94.504 regarding exemptions of agricultural law. He asked the Commission what is defined as agricultural activities, and stated that a bulldozer is not used for such activity. Mr. Williams also stated that TCEQ received a complaint in August 2007, which stated that the property owner was clearing land with a bulldozer. He explained that the complainant spoke to Jennifer Shell and was advised that the property was located in the ETJ. He felt that staff was not knowledgeable regarding the recharge zone and asked the Commission if they would change the zoning in the flood plain. Mr. Williams thanked the Commission for their time.

Camille Phillips, resident on Franklin Drive, asked the Commission to table or reject the Buie Tract zoning and land use map amendment requests. She explained that the vegetation was removed and that the property is a habitat for golden-cheeked warblers. In addition, the property is located over Edwards Aquifer Recharge Zone. Ms. Phillips pointed out that the Buie tract developers omitted caves and that known features were not on the maps. She said that another issue is that we do not know if there are endangered species in the caves because the information was not indicated on the maps. Ms. Phillips stated that environmental assessments need to be made public. She indicated that TCEQ does not have authority over the City of San Marcos and asked the Commission to table the requests.

through the application process with the City to build the room with a window on the front sidewalk of the building. He informed the Commission that his son will serve keg beer, hot dogs, nachos, soft drinks and added that a menu has been attached to the application. Mr. Nami stated he was available to answer questions.

Tom Jenkins, General Manager of Prime Outlets stated that they have a concern with the on-premise consumption request. He pointed out that the property is not part of Prime Outlets. Mr. Jenkins stated that they have had a major complaint regarding people on the Prime Outlet property being belligerent and drunk. He pointed out that it is important that everyone understand that the business selling on premise consumption is not part of Prime Outlets and that it is not a reflection of Prime Outlets. Mr. Jenkins said they are concerned with what could happen in the parking lot and asked that Bathroom Junkie customers consume alcohol at their business. There were no additional citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Seebeck and a second by Commissioner Thomason, the Commission voted five (5) for and two (2) opposed, to approve the request for one year, provided standards are met, subject to the point system; No open containers of alcohol shall be issued for off-premise consumption, signed posted where seating area is located and at the purchase window stating: "It is prohibited for open containers of alcohol to be taken off premise," and that use cups identifiable for the business. The motion carried.

8. LUA-09-14. Hold a public hearing and consider possible action on a request by Baker-Aicklen & Associates, on behalf of Craddock Avenue Partners, LLC for a land use map amendment from Very Low Density Residential (VLDR) to Mixed Use (MU) on 10.65 acres located at south of the Craddock Avenue and Bishop Street Intersection.

9. ZC-09-17. Hold a public hearing and consider possible action on a request by Baker-Aicklen & Associates, on behalf of Craddock Avenue Partners, LLC for a zoning change from Single Family (SF-6) to Mixed Use (MU) on 12.88 acres located at 1314 Franklin Dr.

10. LUA-09-15. Hold a public hearing and consider possible action on a request by Baker-Aicklen & Associates, on behalf of Craddock Avenue Partners, LLC for a land use map amendment from Very Low Density Residential (VLDR) to Medium Density Residential (MDR) on 5.81 acres located west of the future Craddock extension.

11. ZC-09-18. Hold a public hearing and consider possible action on a request by Baker-Aicklen & Associates, on behalf of Craddock Avenue Partners, LLC for a zoning change from Single Family (SF-6) to Multi-Family (MF-12) on 5.64 acres located west of the future Craddock extension.

12. LUA-09-16. Hold a public hearing and consider possible action on a request by Baker-Aicklen & Associates, on behalf of Craddock Avenue Partners, LLC for a land use map amendment from Very Low Density Residential (VLDR) to Mixed Use (MU) on .07 acres west of Tract 2 (outside the City Limits).

13. ZC-09-19. Hold a public hearing and consider possible action on a request by Baker-Aicklen & Associates, on behalf of Craddock Avenue Partners, LLC for a zoning change from Unzoned to Mixed Use (MU) on .07 acres located west of Tract 2 (outside City Limits).

14. LUA-09-17. Hold a public hearing and consider possible action on a request by Baker-Aicklen & Associates, on behalf of Craddock Avenue Partners, LLC for a land use map amendment from Very Low Density Residential (VLDR) to Medium Density Residential (MDR) on 26.44 acres located south of Tract 3 (outside the City Limits).

Bill Meek, 114 Kathryn Cove, San Marcos, Texas and President of the Franklin Square Homeowner's Association spoke on behalf of the Board. He explained that over the past 90 days the homeowner's Association have had an open dialogue with the partners. He said that the partners of the development have been open and responsive with the most impacted community. Mr. Meek stated that in their discussions they did not exclude the adjacent communities and Officers of their Board. Mr. Meek said he was present to speak on behalf of 71 homeowners and their family and friends. He mentioned that this is a good time to start a relationship with a developer, community and city. He applauded the City Planners for being open to any questions presented by the Board. Mr. Meek pointed out that in negotiations they did discuss the possibility of a 5 acres space around the community. As a Board, they agreed this would be a great launching point for their community to convert the property to an exclusive park. He further explained that the developer agreed to deed 5 acres to the Homeowner's Association. Mr. Meek encouraged the Commission to approve the zoning and land use map amendment requests.

Anita Fuller, 121 Kathryn Cove stated she lives in the Franklin Square Neighborhood and reminded people that at one time the property was part of the Buie tract. She pointed out that the property had a cave and many people don't know where it is and that property went through Planning and Zoning and was approved by City Council and now she lives there. Ms. Fuller added that the property had the same geological landmarks that the rest of the Buie tract has now. She mentioned that she was very excited at the last City Council meeting when the Development Agreement was approved, which means that there is some control of what the development is going to be. She said she believes that with this project they will be the first neighborhoods that would have a mixed use development where they can live, work, play and walk. Ms. Fuller pointed out that their neighborhood is the most impacted, and others are in a distance and are separated by streets. She added that the neighborhood was invited to the meeting to address their concerns and they did not attend the meetings and only four citizens attended and got their concerns addressed.

Chris North, Neighborhood Representative for Westover stated she was not speaking on behalf of the neighborhood because they have not met on this issue. Ms. North stated that she does not agree with Anita Fuller. She mentioned that three Board members signed a letter in support from the Franklin Square Neighborhood Association. She felt that three people out of a neighborhood of 71 homes would constitute a majority. Ms. North said she was on the Commission when Franklin Square was platted. She added that Franklin Square preceded the Edward's Aquifer Recharge Zone Regulations and that is why Franklin Square is the way it is. She pointed out that the developer made a lot of promises that he did not keep. She stated that she supports the mixed use concept for the project but to allow the straight zoning and not going through a Planned Development District (PDD) is not holding the developer to anything they say. Ms. North asked the Commission to table or deny the requests.

Larry Rasco stated he was speaking on behalf of his 81 year old mother who resides at 117 Grant Court and is surrounded by the development. He asked the Commission to table the request. Mr. Rasco commented that Ms. Fuller was correct that the neighbors did receive a letter but that most negotiations had been done. He said that there was a sparse turnout at the meeting. Mr. Rasco said he likes the concept of the buffer zone which would be the proposed park. He pointed out that apartments and students come hand in hand and he doesn't want another Sagewood. Mr. Rasco also noted that he has concerns with the Geological features on the property. He asked that the request be tabled.

Ben Paterson 712 Valley Street stated that the request is not in alignment with the Wonderworld plan because the Wonderworld Plan calls for a maximum of two story buildings and the City Council approved three story buildings. Mr. Paterson stated that he understood that the TCEQ permit has been pulled. He asked the Commission to reject the request.

Gordon Muir, partner, 1314 Franklin and lives in Austin. He said he had an opportunity to meet with neighborhood associations over the last several months and addressed concerns. He pointed out that Craddock Avenue by design is supposed to support 30,000 cars a day. Mr. Muir said they have worked with staff and came up with the notion of live, work and play. He mentioned that he wants to be part of the community plans on building his home in phase 3 of the project. Mr. Muir stated that he enjoys the community and have been working on this project for 2 years. In addition, they have been working on issues with TCEQ and endangered species. Mr. Muir gave a brief location of the cave and pointed out that there will not be development in that area. In addition, he said that they have provided buffer zones to the two caves and are sensitive to the features.

Tom Roach stated that he saw the meeting and television and came to the meeting. He explained that he lives a block from the proposed development and thought the meeting was postponed because there was not a date indicated on the notification signs. Mr. Roach said he pulled the sign because it read "postponed" and has it in his truck. He felt that many people did not know of the hearing. Mr. Roach asked that the request be postponed. He felt that more time was needed to review the request and said the request does not need to be voted on tonight.

There were no additional citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Stark and a second by Commissioner Thomason, the Commission voted three (3) for and four (4) opposed to approve LUA-09-14. The motion to approve failed. Commissioners Bishop, DeSoto, Taylor and Bryan voted no.

MOTION: Upon a motion made by Commissioner Taylor and a second by Commissioner Seebeck, the Commission voted seven (7) for and none (0) opposed to postpone LUA-09-14 to the January 12, 2010 Planning and Zoning Commission meeting. The motion carried unanimously.

MOTION: Upon a motion made by Commissioner Seebeck and a second by Commissioner Taylor, the Commission voted seven (7) for and none (0) opposed to postpone ZC-09-17 to the January 12, 2010 Planning and Zoning Commission meeting. The motion carried unanimously.

MOTION: Upon a motion made by Commissioner Seebeck and a second by Commissioner Taylor, the Commission voted seven (7) for and none (0) opposed to postpone LUA-09-15, ZC-09-18, LUA-09-16, ZC-09-19, LUA-09-17, and ZC-09-20 to the January 12, 2010 Planning and Zoning Commission meeting. The motion carried unanimously.

16. Discussion and consideration of the Adult Oriented Business Ordinance.

MOTION: Upon a motion made by Commissioner Taylor and a second by Commissioner Seebeck, the Commission voted six (6) for and one (1) opposed, to recommend the Ordinance as written to the City Council. The motion carried. Commissioner Stark voted no.

17. Discussion Items.

Chair Bishop suggested that staff meet with the Police Department staff and convey the importance of detail information on police reports referring to CUPs.

Chair Bishop suggested a farewell gathering for the three outgoing Commissioners. He suggested at the end of January, 2010.

Sofia Nelson reported that there were currently no agenda items for the December 22, 2009 Planning Commission meeting.

Planning Report

Matthew Lewis introduced new employee, Melissa McCollum, Chief Planner. He thanked the Commissioners for their hard work.

Commissioners' Report

There were no Commissioner's report.

Commissioner Thomason stated he appreciated working with the Commission and with staff.

18. Consider approval of the minutes from the Regular Meeting of November 10, 2009.

MOTION: Upon a motion made by Commissioner Seebeck and a second by Commissioner Thomason, the Commission voted six (6) for, none (0) opposed, (1) abstained, to approve the Regular Meeting Minutes of November 10, 2009 with corrections. The motion carried. Commissioner Taylor abstained. Commissioners Pounds and Shy were absent.

19. Questions and answers from the Press and Public.

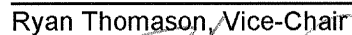
Tom Roach stated that he spoke to staff regarding the notification sign and was advised that the items had been postponed. Commissioner Bishop stated that the items have been postponed until January 12, 2010.

20. Adjournment


Chair Bishop adjourned the Planning and Zoning Commission at 9:04 p.m. on Tuesday, December 8, 2009.



Sherwood Bishop, Chair



Ryan Thomason, Vice-Chair



Jim Stark, Commissioner



Randy Bryan, Commissioner



Curtis Seebeck, Commissioner

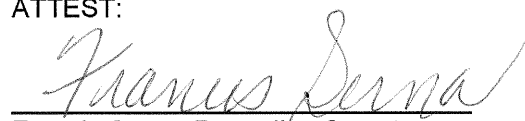


Bill DeSoto, Commissioner



Bill Taylor, Commissioner

ATTEST:



Francis Serna, Recording Secretary

